

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

TRINIDAD RAMOS- GARCIA (7),
ALEJANDRO VIZCARRA-MILLAN (13),
INES TAMAYO-LOPEZ(24),
a/k/a Carlos Valdez-Rios
TOBY LEE OLSON (25),
TARYN ROBIN COLEMAN (26),
GEORGE ALBERT FLAHERTY (31),
OLGA MARIA SANDOVAL-ZAZUETA (35),
JESUS GUILLERMO BUENO-MARTINEZ (36),
TODD ANDREW HARPOLE (37),
NICHOLAS JOSEPH KLOEPFEL (39),
DONAVAN JAMES STARK (40),
THOMAS CHARLES COLLUM, Sr. (41),
SONY JOE WIGGINS (42),
CORY JAY ANTON (44).

Defendants.

NO. CR-08-0137-WFN

ORDER

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

RODNEY EUGENE DIETRICH,

Defendant.

NO. CR-09-0006-WFN-1

ORDER

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JUAN RAMON RUIZ LECHUGA,
a/k/a Ramon Traviso-Ruiz,

Defendant.

NO. CR-09-0008-WFN-1

ORDER

A fourth pretrial conference and motion hearing was held June 4, 2009. Thirteen Defendants in case CR-08-0137-WFN were present and represented as set out in the table¹ below.

Defendant	C	I	Counsel
Trinidad Ramos- Garcia (7)	X	Y	Kenneth D. Therrien
Alejandro Vizcarra-Millan (13)	X	Y	Scott Etherton
Ines Tamayo-Lopez (24)	X	Y	Philip E. Nino
Taryn Robin Coleman (26)	NO		Edwin F. Alden
George Albert Flaherty (31)	NO		
Olga Maria Sandoval-Zazueta (35)	X	Y	Richard L. Mount
Jesus Guillermo Bueno-Martinez (36)	X	Y	John R. Crowley
Todd Andrew Harpole (37)	X		Jeffrey S. Niesen
Nicholas Joseph Kloepfel (39)	X		Chris A. Bugbee
Donavan James Stark (40)	X		Thomas E. Cooney, Jr.
Thomas Charles Collum, Sr. (41)	X		Linda J. Payne
Sony Joe Wiggins (42)	NO		George P. Trejo, Jr.
Cory Jay Anton (44)	NO		Ronald A. Van Wert

Court-appointed interpreter Bea Rump assisted Defendants requiring the use of an interpreter; Assistant United States Attorneys Stephanie Van Marter, Earl Hicks and Russell Smoot represented the Government. Frank L. Cikutovich, counsel for Mr. Flaherty (31), was not present. Defendant Juan Ramon Ruiz Lechuga (CR-09-0008-WFN-1), who is in custody, was also present and represented by Salvador Mendoza, Jr. and assisted by Court-appointed interpreter Bea Rump. Defendant Rodney Eugene Dietrich (CR-09-0006-WFN-1), who is not in custody, was present and represented by Michael W. Lynch. Defendant Toby Lee Olson , who is in custody, waived his right to appear at the hearing.

¹ C = In custody; I = assisted by Court appointed interpreter.

1 The Court discussed the status of discovery, and addressed pending pretrial motions,
2 including the Motions to Continue. The Government gave an update of the discovery that
3 has been recently disclosed.

4 The Court has reviewed the file and motions and is fully informed. This Order is
5 entered to memorialize and supplement the oral rulings of the Court. Accordingly,

6 **IT IS ORDERED** that:

7 1. All references to court record numbers in this Order refer to case **CR-08-0137-**
8 **WFN** unless otherwise noted.

9 2. Defendant (26) Coleman's Motion to Join in Pretrial Motions of Any
10 Memorandum . . . , filed May 29, 2009, **Ct. Rec. 1325**, is **DENIED AS MOOT**. All
11 counsel are reminded **NOT TO FILE DUPLICATIVE MOTIONS**. Once a co-Defendant
12 files a motion, unless the content is specific to that Defendant only, all Defendants
13 are considered to have joined in the motion unless they file a notice opting out. Motions
14 to continue a trial date is specific only to the Defendants set for trial on that date.

15 **DISCOVERY**

16 3. Defendant (42) Wiggins' Motion to Interview Informant and/or Cooperation
17 Co-Defendants, filed May 14, 2009, **Ct. Rec. 1251** is **GRANTED IN PART and DENIED**
18 **IN PART**.

19 Reports and plea agreements related to cooperating co-defendants have been
20 disclosed except for those related to co-defendants who have not yet entered a change of
21 plea. The latter will be disclosed once the change of plea is entered. Some confidential
22 informants or confidential sources [CI/CS] have been identified in reports and two additional
23 individuals will be identified within the week. Some CI/CS will not be called as witnesses
24 and the identifying number of the CI/CS will be disclosed.

25 The Government will facilitate interviews of cooperating co-defendants and CI/CS
26 who are willing to be interviewed by defense counsel.

1 4. Defendant (42) Wiggins' Motion to Produce Witness Benefits, filed May 14,
2 2009, **Ct. Rec. 1253**, is **GRANTED IN PART and DENIED IN PART**.

3 The Government has agreed to disclose promises of leniency, threats of
4 prosecution, plea bargains, offers of immunity and any other *Brady* type of evidence.

5 Benefits to cooperating co-defendants are memorialized in the plea agreements.
6 Benefits to CI/CS are included in reports. The Government will disclose any other
7 contemplated benefits by letter.

8 5. Defendant (42) Wiggins' Motion for Production of 404(b) and 609 Evidence, filed
9 May 14, 2009, **Ct. Rec. 1255**, and Defendant (44) Anton's Request for Notice of 404(b)
10 Evidence, . . . , filed May 18, 2009, **Ct. Rec. 1290**, are **GRANTED**.

11 The Government is not aware of any 404(b) evidence at this time, but will
12 promptly disclose it for all Defendants if it is discovered. The Government asserts that prior
13 acts of Defendants that are inextricably intertwined with the conspiracy will be introduced
14 into evidence.

15 The Government will confer with Defendant (44) Anton's counsel regarding some
16 evidence that Defendant contends may be 404(b).

17 Rule 609 evidence for Defendants has been disclosed in criminal history reports
18 and unsealed plea agreements.

19 6. Defendant (42) Wiggins' Motion for Production of Grand Jury Testimony, filed
20 May 14, 2009, **Ct. Rec. 1257**, is **DENIED AS MOOT**. The Court has already granted this
21 request and ordered that the transcripts be prepared and provided at least two weeks before
22 trial. However, the Government has agreed to make all reasonable efforts to disclose the
23 transcripts of the grand jury testimony of witnesses that will testify at trial no later than
24 July 31, 2009.

25 7. Defendant (42) Wiggins' Request for Disclosure [expert testimony], filed May 14,
26 2009, **Ct. Rec. 1259**, is **GRANTED**.

1 Most, if not all, of the expert reports have already been disclosed. The
2 Government agreed to disclose as soon as possible, its notice of expert witnesses, a summary
3 of the witnesses' testimony and the CV of the experts.

4 8. Defendant (42) Wiggins' Motion for Pre-Trial Production of Charts, Summaries,
5 filed May 14, 2009, **Ct. Rec. 1260**, is **GRANTED**.

6 The Government has agreed to disclose any trial charts or summaries two weeks
7 before trial, and will update the disclosures as necessary.

8 9. Defendant (40) Stark's Motion for *Brady*, *Giglio*, *Henthorn*, Jencks Act, and
9 Witness List, filed May 18, 2009, **Ct. Rec. 1294** is **GRANTED IN PART AND DENIED**
10 **IN PART**.

11 The Government understands its ongoing obligation to disclose *Brady* and *Giglio*
12 evidence.

13 As to the *Henthorn* evidence the Government represents that current review of
14 employment of federal agency witnesses has revealed no evidence that requires disclosure.
15 The Government has requested employment record review of state agency witnesses and
16 will report to the Court and counsel, no later than **June 22, 2009**, as to the status of that
17 review.

18 As to the Government's witness list, the Government has agreed to disclose as
19 early as possible its list of law enforcement witnesses. Other witnesses will be disclosed no
20 later than one week before trial.

21 10. Defendant (44) Anton's Motion for Bill of Particulars, filed May 18, 2009, **Ct.**
22 **Rec. 1284**, and Defendant (42) Wiggins' oral motion for a bill of particulars, are **DENIED**.
23 Evidence, in addition to what has already been disclosed of the Defendants' alleged role in
24 the conspiracy, will be disclosed by **June 11, 2009**.

25 11. The Government will create summaries of telephone call contacts from the
26 telephone logs, for each Defendant no later than **June 22, 2009**.

TRIAL GROUPINGS

12. Defendant (44) Anton's Motion to Sever, filed May 18, 2009, **Ct. Rec. 1286**, is **DENIED with a right to renew**.

OTHER MOTIONS

13. Defendant (40) Stark's Motion for Order Directing U.S. Probation to Provide Advance Opinion, filed May 18, 2009, **Ct. Rec. 1292**, is **DENIED AS MOOT**. The Probation Office has already provided counsel with preliminary guideline calculations.

14. Defendant (37) Harpole's Motion to Suppress Statements, filed May 18, 2009, **Ct. Rec. 1276** and Motion to Suppress Evidence, filed May 18, 2009, **Ct. Rec. 1282**, shall be set for hearing on **July 13, 2009, at 9:00 a.m., in Spokane**, Washington.

The Government's response to the Motions shall be filed no later than **July 6, 2009**.

15. Defendant Lechuga's Motion to Suppress Statements and Evidence Seized, filed May 18, 2009, **CR-09-08-WFN-1, Ct. Rec. 57**, shall be set for hearing on **July 13, 2009, at 9:00 a.m., in Spokane**, Washington.

The Government's response to the Motion shall be filed no later than **July 6, 2009**.

CONTINUANCE

16. The following Motions to Continue are **GRANTED**:

(a) Defendant (7) Ramos-Garcia's Motion for an Extension of Time to File Pretrial Motions and to Continue Pretrial and Trial Date [Trial I - June 22, 2009], filed May 18, 2009, **Ct. Rec. 1270**;

(b) Defendant (13) Vizcarra-Millan's Motion to Join/Continue [Trial I - June 22, 2009], filed May 29, 2009, **Ct. Rec. 1324**;

(c) Defendant (24) Tamayo-Lopez' Third Motion for Order Continuing Trial Date [Trial III - July 20, 2009] and Also Motions Due Date, filed May 15, 2009, **Ct. Rec. 1266**; and

1 (d) Defendant (44) Anton's Motion to Continue Trial [Trial II - July 6, 2009]
2 and to Extend the Deadline for Filing Pretrial Motions, filed June 3, 2009, **Ct. Rec.**
3 **1344.**

4 This case has been found to be a complex case based upon the number of
5 defendants, the number of counts, and the large volume of discovery pursuant to 18 U.S.C.
6 § 3161(h)(7) (B)(ii). The Court also finds that the ends of justice served by the granting of
7 a continuance of the trials in this matter outweigh the best interests of the public and
8 the Defendants in a speedy trial. Trial dates of June 22, 2009 (Trial I), July 6, 2009 (Trial II),
9 and July 20, 2009 (Trial III) would unreasonably deny defense counsel adequate time to
10 review discovery, prepare for trial and provide effective assistance of counsel, taking into
11 account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(A).

12 17. The trial dates of June 22, 2009, July 6, 2009 and July 20, 2009 are **STRICKEN**
13 **and RESET to the dates set forth in Paragraph 20, as to the listed Defendants, at**
14 **1:00 p.m., in Spokane, Washington.**

15 18. All time from the trial dates of June 22, 2009, July 6, 2009 and July 20, 2009,
16 to the new trial dates in Paragraph 20, is **EXCLUDED** for speedy trial calculations
17 pursuant to 18 U.S.C. § 3161(h)(6) and (7)(A) as to all Defendants in that trial group.
18 Waivers of speedy trial rights were signed by all Defendants, except Defendant (41) Collum,
19 Sr., who refused to sign the waiver, and Defendant (31) Flaherty, whose attorney was
20 not present.

21 Counsel for Mr. Flaherty shall obtain a waiver of speedy trial for Mr. Flaherty,
22 which is attached to this Order, and file the same no later than **June 15, 2009.**

23 19. The final pretrial conferences set for June 22, 2009, July 6, 2009 and July 20,
24 2009, are **STRICKEN and RESET to the trial dates in Paragraph 20 as to the listed**
25 **Defendants, at 10:00 a.m., in Spokane, Washington.**

26 20. The trial groupings and trial dates appear in the following table.

TRIAL GROUP I: TRIAL DATE September 14, 2009

No.	Name	No.	Name
7	Trinidad Ramos-Garcia	35	Olga Maria Sandoval-Zazueta
13	Alejandro Vizcarra-Millan		

TRIAL GROUP II: TRIAL DATE October 13, 2009

No.	Defendant Name	No.	Name
26	Taryn Robin Coleman	37	Todd Andrew Harpole
31	George Albert Flaherty	40	Donavan James Stark
41	Thomas Charles Collum, Sr.	42	Sony Joe Wiggins
44	Cory Jay Anton		

TRIAL GROUP III: TRIAL DATE November 2, 2009

No.	Defendant Name
24	Ines Tayamo-Lopez
36	Jesus Guillermo Bueno-Martinez
39	Nicholas Joseph Kloepfel
CR-09-06-1	Rodney Eugene Dietrich
CR-09-08-1	Juan Ramon Ruiz Lechuga

21. If fewer Defendants will be proceeding to trial, the Government shall file a proposal for re-grouping the remaining Defendants for trial, no later than **July 20, 2009**.

22. Trial briefs, motions in limine, requested voir dire, witness and exhibit lists, and a set of proposed **JOINT JURY INSTRUCTIONS** shall be filed and served on or before:

- (a) **August 31, 2009, for Trial Group I;**
- (b) **September 29, 2009, for Trial Group II; and**
- (c) **October 19, 2009, for Trial Group III.**

Jury instructions should only address issues that are unique to this case, and shall include instructions regarding the elements of each claim, any necessary definitions and a proposed verdict form. The Joint Proposed Jury Instructions shall include:

(d) The instructions on which the parties agree; and

(e) Copies of instructions that are disputed (i.e., a copy of each party's proposed version of an instruction upon which they do not agree). All jury instructions from the most current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements of LR 51.1(c).

Each party shall address any objections they have to instructions proposed by any other party in a memorandum. The parties shall identify the specific portion of any proposed instruction to which they object and shall elaborate the basis for the objection. Objections asserting that an instruction sets forth an incorrect statement of law shall describe the legal authority that supports this objection. Failure to file an objection and supporting argument may be construed as consent to the adoption of an instruction proposed by another party.

23. Indigent Defendants' requests for issuance of subpoenas and payment of costs and fees for trial witnesses shall be filed no later than ten (10) days before trial, excluding weekends and holidays.

24. Defendant (44) Anton's Reservation of Right to File Further Motions Based on Continuing Discovery and Court Rulings, filed May 18, 2009, **Ct. Rec. 1289**, is **GRANTED**.

25. A fifth pretrial conference and motion hearing shall be held **July 27, 2009, at 11:00 a.m., in Spokane**, Washington.

(a) All additional motions shall be filed and served no later than **July 8, 2009**.

(b) Responses shall be filed and served no later than **July 15, 2009**.

26. **Excludable Time:** All time from the filing of the Defendant's Motion, on the date noted in the following table, to the date of the hearing on June 4, 2009, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(1)(D) as to the listed Defendants.

Defendant's Name (Number)	Motion's Name (Ct. Rec. Number)	Motion Filing Date	Defendant Number to Whom Time Is Excluded
Sony Joe Wiggins (42)	To Interview Informant and/or Cooperating Co- Defendants (1251)	05/14/09	7, 13, 24, 25, 26, 31, 35, 36, 37, 39, 40, 41, 42, 44 and Juan Ramon Ruiz Lechuga CR-09-008-WFN

27. Defendant (41) Collum's oral request to be housed in Spokane, Washington, to avoid counsel's need to travel to Benton County to consult with Defendant is **DENIED**.

The District Court Executive is directed to file this Order and provide copies to counsel.

DATED this 9th day of June, 2009.

06-04

s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE